IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3829 OF 1991

1. Shri Krishnaji Ganesh Unde since deceased by his heirs & legal representatives namely:-

(a) Dhondiram Krishnaji Unde, age 51,
(b) Shri Nandkumar Krishnaji Unde, age 45,
(c) Ms. Kunda Krishnaji Unde, age 53.
Nos. 1(a) & 1(b) r/at 504, Budhwar-Peth, Pune & 1(c) r/at Joti Wada, Tapkiri Galli, Near Shaniwar Wada, Pune.
(Amended as per court's order dated 22.11.2000 in C.A.No. 2303/1998

2. Shri Vishnu Ganesh Unde, since deceased by his heirs & legal representatives namely :-

(a) Dhondiram Krishnaji Unde, age 51,
(b) Shri Nandkumar Krishnaji Unde, age 45,
(c) Ms. Kunda Krishnaji Unde, age 53,
Nos. 2(a) & 2(b) r/at 504, Budhwar-Peth,Pune.
No.2(c) r/at 504, Joti Wada, Tapkiri Galli, Near Shaniwar Wada, Pune.
(Amended as per Court's order dated 22.11.2000 in C.A.No. 2305/1998)

..Petitioners (Org.Applicants/Landlords.)

Versus

Shri Kaluram Baban Kamthe
R/o. Kondhave Bk. Taluka-Haveli, Dist. Pune.

..Respondent. (Ori.Opponent-Tenant)

Mr. M.V. Sali for the Petitioners.
Mr. P.S. Dani for the Respondent.

CORAM : S. A. BOBDE, J.
DATED : 14th SEPTEMBER,2005.

ORAL JUDGMENT .:-

1. The petitioners are aggrieved by the order passed by the Maharashtra Revenue Tribunal, Pune dated 31st July, 1991 in Revision Application No. MRT.P.V.7/91 (Tnc.B.125/1991). By the impugned order, the Maharashtra Revenue Tribunal; hereinafter referred to as "the MRT", has remanded the matter for reinvestigation on the point of delivery of possession of the suit land to the petitioners and to find out whether the petitioners still continue in possession of the suit land.

2. The petitioners questioned the jurisdiction of the MRT to entertain the revision in view of the finality clause in section 73 of the Bombay Tenancy and Agricultural Lands Act, 1948; hereinafter referred to as ‘the Act’; which reads as follows :-

> "73. Execution of order for payment of money or for restoring possession. -(1) Any sum the payment of which has been directed by an order of the Mamlatdar or the Tribunal including an order awarding costs shall be recoverable from

the person ordered to pay the same as an arrears of land revenue.

(2) An order of the Mamlatdar or the Tribunal awarding possession or restoring the possession or use of any land shall be executed in the manner provided in section 21 of the Mamlatdars' Courts Act, 1906, as if it was the decision of the Mamlatdar under the said Act :

(Provided that such order shall not be executed till the expiry of the period of appeal (or, as the case may be, of application for revision as provided) in section 79.)

(3) An order or decision of the Mamlatdar in execution proceedings conducted under sub-section (2), subject to appeal (if any) to the Collector, shall be final.)

(emphasis supplied)

3. In short the submission of the petitioners is that an order in execution passed by the Mamlatdar is only subject to an appeal to the collector and is thereupon made final. Therefore, no further appeal or

revision is tenable against that order. The provision under which the MRT has exercised its jurisdiction is section 76, which is reproduced hereinafter.

4. The facts of the case are as follows :-

. The dispute is about the agricultural land bearing Survey No. 15/2, admeasuring 2 hectare and 41 ares at Kondve Budruk, Tal. Haveli, Dist. Pune. The respondent, who was the tenant, had agreed to the rate of Rs. 20/- per year. As far as back as in 1956, the petitioners applied for possession of the suit land which was granted by order dated 9.5.1956 under section 14, read with section 29(2) of the Act. This order was made in the petitioners favour on the ground that the respondent was a wilful defaulter in payment of rent.

5. On 24.3.1958, the Tahsildar passed an order, directing restoration of possession of the suit land in favour of the petitioners. The petitioners accepted this order and did not file an appeal or revision against it.

6. On 11.8.1969, the Tahsildar issued a notice to the respondent to hand over possession of the suit

land to the petitioners. The respondent appealed against the said notice. However, the S.D.O. dismissed the appeal by an order dated 14.10.1969 on the ground that no appeal had been preferred against the basic order dated 24.3.1958 by which the possession was ordered to be restored to the petitioners.

7. Thereafter, on 18.12.1969 the respondent resorted to sections 70(b), 25 and 33(b) of the Act. The Tahsildar refused to entertain these proceedings, apparently on the ground that it was sent by post. Against such refusal, the respondent filed a tenancy appeal under section 70 to the Collector of Pune, who by his judgment and order dated 4.5.1970 dismissed the appeal in view of the fact that for 12 years the respondent has not chosen to have the order set aside. The revision preferred by the respondent was also dismissed on 24.9.1970.

8. The respondent then filed regular civil suit No. 1390/1970 in the court of the second Joint Civil Judge, J.D.,Pune for a perpetual injunction against the petitioners. An application for injunction made in the suit was dismissed on 17.7.1971, holding that the respondent’s tenancy had already been terminated

and all earlier proceedings had been held against him. The appeal preferred by the respondent before the Assistant Judge, Pune being Misc. Civil Appeal No. 54/1971 was dismissed on 10.4.1972. The respondent then applied to the Tahsildar to stay the execution proceedings. On 16.5.1972 the Tahsildar rejected the application. Against this, the respondent preferred an Appeal No. 379/1972 in the court of the Deputy Collector and the Dy. Collector by the judgment and order dated 30th November, 1972 dismissed the same.

9. After all these, eventually, the Tahsildar issued notice to the respondent on 7.9.1974 to hand over possession of the suit land on 23.9.1974. On 11.10.1974 the possession was actually handed over to the petitioners. The documents on record bear out the fact that the possession was handed over in the presence of panchas and the fact that the respondent refused to sign the possession receipt prepared on that count. Thereafter, the petitioners applied for a mutation entry No. 2541, which was duly certified. Even that has been appealed by the respondent.

10. Peculiarly, against the order of fixing the date for handing over possession, the respondent filed appeal No. 30/75 in the Court of S.D.O., who by his

judgment and order dated 30th March, 1991 dismissed the same. It is against this judgment that the respondent preferred the revision.

11. Mr. Sali, the learned counsel for the petitioners strongly contended that the Maharashtra Revenue Tribunal had no jurisdiction whatsoever to entertain that revision, which was against the order of the Sub-Divisional Officer, dismissing the respondent's appeal in the course of execution. As observed earlier, the S.D.O. had dismissed the appeal, preferred by the respondent against the order of fixing the date for handing over the possession.

12. It is clear that the petitioners are genuinely aggrieved in the true sense of that word by the amount of litigation which the respondent has resorted to after the petitioners obtained as order for restoration of possession as far back as on 24.3.1958. This order is not yet set aside.

13. It is clear that the order has not yet been interfered with even in the proceedings in execution. It is obvious from section 73 reproduced earlier that an order or decision of the Mamlatdar in execution proceedings is made final, only subject to an appeal

(if any) to the Collector, vide sub-section (3). Therefore, it is clear that the MRT had no jurisdiction to entertain the revision which it presumably did under section 76. A construction of the statutory scheme must be made in such a way that it gives effect to the intention of the Legislature. The finality which the legislature has given to an order in execution proceedings cannot be said to have been taken away by the same legislature by enacting section 76 of the Act, which provides for a revision to the MRT. Section 73 which gives finality to an order in execution only subject to an appeal, must be read harmoniously with section 76. Section 76 reads as follows :-

76. Revision.- (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the (Maharashtra Revenue Tribunal) constituted under the said Act against any order of the Collector on the following grounds only - ,

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice,

(2) In deciding applications under this section the (Maharashtra Revenue Tribunal) shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal.)

14. Construing the above provision in a manner so as to provide a revision even against an order in execution, would defeat the express provision of sub-section (3) of section 73 which gives finality to the order in execution. In Venkataramana Devaru vs. State of Mysore reported in AIR 1958 SUPREME COURT 255, the Supreme Court has observed as follows in para 29 :-

"The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to

be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect would be given to both. This is what is known as the rule of harmonious construction".

. Similarly in Sultana Begum vs. Prem Chand Jain AIR 1997 Supreme Court 1006, the Supreme Court laid down the Rule of construction as follows :-

This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a Section or between two different Sections or provisions of the same statute.

On a conspectus of the case law indicated above, the following principles are clearly discernible :

(1) It is the duty of the Courts to avoid a head on clash between two Sections of the Act and to construe the provisions which appear to

be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the Court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the Courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, is possible, effect should be given to both. This is the essense of the rule of "harmonious construction".

(4) The Courts have also to keep in mind that an interpretation which reduces one of the provisions as "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose".

15. Applying the aforesaid rule of construction in the present statute, section 73 which gives finality to an order in execution only subject to an appellate orders of the collector and section 76 which empowers the Maharashtra Revenue Tribunal to revise any orders of the collector on certain grounds, can be given effect to only by reading them harmoniously. This can be done only by holding that the powers to revise or confirm under section 76 can be exercised in respect of the orders of the collector unless the order is one passed by the collector in an appeal carried to him under section 73 from an order in execution.

16. In this view of the matter, the petition deserves to be allowed with costs throughout.

17. Rule is made absolute in the above terms.

DT.14.09.05 (S.A.BOBDE,J)